

United States District Court  
Southern District of Texas  
FILED

#16  
JUN 03 1998

Michael N. Milby, Clerk of Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

EDWARD ALCALA, et al.,

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CIVIL ACTION NO. B-96-203

Plaintiffs,

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PLAINTIFFS' FIRST AMENDED  
ORIGINAL COMPLAINT

JURY DEMAND

vs.

ALEX PEREZ, in his official capacity as  
Sheriff of Cameron County, Texas and  
Cameron County, Texas,

Defendants.

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**I. PRELIMINARY STATEMENT**

1. This is an action by employees of the Cameron County Sheriff's Department under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* and § 16(b). The plaintiff officers who include detention officers, investigators, patrol officers, and miscellaneous other officers of the Cameron County Sheriff's Department have worked many hours of overtime without compensation. As public employees, the plaintiffs are entitled to overtime pay compensatory time pay or straight time pay for all hours worked. The plaintiffs have been unlawfully denied their pay for hours worked either at straight time, time and a half overtime, or time and a half compensatory time. Plaintiffs herein demand all wages and overtime owed plus an equal amount as liquidated damages. This action is brought as a collective action under 216(b).

## II. JURISDICTION

2. This Court has jurisdiction of this cause under 29 U.S.C. § 216(b) Fair Labor Standards Act and 28 U.S.C. § 1331 federal question.

## III. PARTIES

3. Plaintiffs are employees and former employees:

Arabella Acosta	Daniel Campos	Irma De La Garza
Edward Alcala	Rolando Cano Jr.	Hortencia De La Pena
Victor Alvarado	Amado Cantu	Alfred De Los Santos
Guillermo Alvarez	Ernesto Cantu	Robert De Los Santos
Joe Anzaldua III	Juan Jose Canul	Cesar R. Diaz
Joe Anzaldua IV	Joseph J. Canul	Domingo Diaz Jr.
Juan Manuel Aranda Jr.	Rene Capistran	Robert Domanski
Roy Armendariz	Luciano Cardenas	Gregorio Escamilla
Andres Arreola	Miguel Cardenas	Luis Esparza
Roel Arreola	Ignacio Casanova	Nora Esparza
Antonio Arriaga	Guadalupe Castillo Sr.	Roberto Esparza Jr.
Heriberto Avila	Guadalupe Castillo Jr.	Jimmy Espindola
Jose Balboa Jr.	Jorge Castorena	Raul Fernandez
Emilio Balli	Johnny Cavazos	Agustin Flores
Raul Banda	Jose F. Cavazos Jr.	Alejandro Flores
Mike M. Barburena	Jose L. Cepeda	Arturo Flores
Armando Barbosa	Hector Cervantes	Celso Flores
Cleo L. Beauford	Martha Cervantes	Ernesto Flores
Bert M. Blanchard	Juan A. Cisneros	Ernesto G. Flores
Jose Gilberto Blanco Jr.	Manuel Cisneros	Gilbert Flores
Rene J. Borrego	Marco A. Claire	Juan J. Flores
Gilbert Briones	Alonzo Corona	Mary Ann Flores
Merced Burnias Jr.	Juan N. Cortez	John Frizzell
Luis Burrola	Lucio M. Cortinas	Hector Galicia
Salvador G. Cabrera	George Cruz	Hugo Galicia
Bernardo Camacho	Marian Culver	Abel G. Garcia
Enrique Camarillo	Jaime Davalos	Alex Garcia
Juana Campbell	Benito De La Cruz	Fausta Garcia

George L. Garcia	Roman A. Gracia	German Martin
Gregorio Garcia	Joe Guajardo	Luis Gonzaga MartinezJr.
Jose A. Garcia	Alfredo Guerra Jr.	Nat Martinez
Jose Luis Garcia	Efrain Guerrero	Tomas G. Martinez
Jose R. Garcia	Frank Guerrero	Jesus N. Medina
Maria De Jesus D. Garcia	Alfredo Gutierrez	Ramiro Medrano
Omar Garcia	Jose T. Gutierrez Jr.	Rolando Medrano Sr.
Patricio M. Garcia	Martha Gutierrez	Rolando Medrano Jr.
Pedro Garcia Jr.	Martin Guzman	Wenceslado Melendez Jr.
Raul Garcia	Javier Hernandez	Luis Alberto Mendietas
Ricardo Garcia	Raul Hernandez	Juan Mendoza Jr.
Roy S. Garcia	Xavier Lee Hernandez	Ramon Luis Michel
San Juana Perez Garcia	Juan Herrera III	Lorenzo Molano
Vidal Garcia	Mirosalva Herrera	Jorge Moncada
Eusebio Garza	Manuel Hinojosa III	Samuel Montemayor
Gerardo Garza Sr.	Daniel Huerta	Jose A. Montes
Jose Candelario Garza	Dolores Benavides Ibarra	Jaime Munivez
Jose Carlos Garza	Robert D. Johnson	Juan Munoz
Manuel M. Garza	John F. Keener	Floyd Nelson
Pedro Garza	Pernal Keener	Jaime Nelson
Rogelio Garza	Jorge R. Kowalski	Lelina Nieto
Sabas Garza	Fermin Leal	Martin Nieto
Sophie Ann Garza	Hector Leal	Manuel Nunez Jr.
John A. Gilbert	Mike A. Leinart	Samuel Nunez
Elida C. Gomez	David Limon	Roger Olsson
Gilbert Gomez	Jose Longoria Jr.	Joe Olvera
Santos Gomez	Jose Garcia Longoria Jr.	David Ortega Jr.
Armando Gonzalez	Francisco Lopez	Isaias Padilla
David Gonzalez	Jose Lopez	Maria A. Padilla
Edmundo H. Gonzalez	Robert Lopez	Joe Paz
Elizabeth Sosa Gonzalez	Victor Lopez	Javier Pena
Francisco Gonzalez	Guillermo M. Lozano III	Rosendo Pena
George L. Gonzalez	Rodolfo Ismael Lozano	Abel Perez Jr.
Hector Javier Gonzalez	Fernando Lucio	Carlos R. Perez
Homer Gonzalez	Alfredo Luna	David Perez Jr.
J.M. Gonzalez	Luis Luna Jr.	Raul Perez Jr.
Roberto L. Gonzalez	Armando Maldonado	Ricardo David Perez
Sylvia Gonzalez	Cristina Maldonado	Javier F. Pineda
Thomas Gonzalez III	Rolando Mancilla	Analicia G. Ponce

Antonio B. Ramirez	Abel E. Torrez III
Daniel Ramirez	Antonio Torres
Jose Ramirez	Raul Torres Jr.
Ramiro Raya	Michael E. Trejo
Andy Reed	Albert Trevino Jr.
Reynaldo Rey	Edmundo Trevino
Juan Reyna Jr.	Edward Trevino
Juan G. Reyna	Federico Trevino
Jose Angel Rivas Jr.	Hilda Trevino
Rolando Rivas	Juanita Trevino
Agustin Rivera Jr.	Raul Trevino
Jose A. Rocha	Luis I. Valdez
Alonzo Rodriguez	Cesar R. Valdes
Amadeo Rodriguez	Dolores Y. Valle
Feliza Rodriguez	Martin A. Vallejo
Juan Jose Rodriguez	Jeffrey Frank Vancise
Juan Luis Rodriguez	Jimmy S. Vasquez Jr.
Raul E. Rodriguez	Enedina Velasco
Ricardo Rodriguez	Mario X. Vera
Robert Rodriguez Jr.	Maria G. Vidal
Rogelio Rodriguez	Conrado G. Villanueva III
Jesus Rosas	Isaias Villarreal Jr.
Jose Roberto Ruiz	Jose Villarreal Jr.
Roman Ruiz	Jose Arturo Villarreal Jr.
Joseph C. Saenz	Juan E. Villarreal
Belinda Salas	Rodolfo Villarreal
Crispin G. Salazar	Terry Wayne Vinson
Gilbert Salazar	Richard Allen Walker
Omar Salazar	Walter L. Weaver
Tomas Salazar	James Woodard
Eduardo M. Sanchez	Jose Luis Yanez
Frank Sanchez	Elias Ybarra
John A. Sanchez	Horacio A. Zamora
Sylvia Ann Santillana	Joel Zamora
Luis Humberto Shuete	Eduardo Zepeda
Roberto Silva	Gilberto Zepeda
Harry Stevens Jr.	Roy Zepeda
Armando Tenorio	
John Tomalenus	

4. Defendant Omar Lucio and his predecessor are sued in their official capacities.

The Sheriff and defendant Cameron County, Texas are an employer within the meaning of the Fair Labor Standards Act.

#### **IV. FACTS**

5. The plaintiffs are employees of the defendant within the meaning of the Fair Labor Standards Act.

6. Over the years, the defendants have had a policy or policies of failing to record hours worked in excess of the regularly assigned shift.

7. The defendants have failed to keep accurate time records for various categories of employees, including patrol officers, investigators, transportation officers, bailiffs and detention officers.

8. Defendants have not kept accurate records of hours worked as a matter of practice. Defendants records do not reflect the hours that plaintiffs have actually worked.

9. Defendants and its agents have knowingly and willfully failed to record time actually worked and have intentionally failed and refused to record what would have been compensatory time and a half.

10. Defendants have long been aware of the above problems regarding overtime hours and have failed to comply with federal laws regarding record keeping and compensation.

11. The defendants have operated their compensatory time program in such a manner as to deny the plaintiffs their straight time, compensatory time, or overtime pay for all hours worked.

12. The defendants have not paid the plaintiffs overtime wages in lieu of allowing plaintiffs to take their compensatory time off.

13. The defendants have prohibited the plaintiffs from taking compensatory time off and have denied their responsibility to pay overtime wages for all hours accumulated or to allow compensatory time.

14. The defendants engage in the following pattern and practices to deprive the plaintiffs of pay for all hours worked:

- a. purporting to place all employees on a salary basis when in fact all employees are paid on an hourly basis;
- b. failed to compensate investigators for the one half hour before shift and during lunch period when they are on call;
- c. failed to compensate employees who acted as reserve deputies;
- d. failed to compensate investigators for meetings and training held outside the regular shift;
- e. failed to compensate patrol deputies the thirty minutes worked before shift and for lunch periods on call and for time worked over shift;
- f. failed to compensate patrol deputies and detention officers for extra days worked on a shift change;

- g. failed to compensate patrol deputies for training time outside their regular shift;
- h. failed to fully compensate employees for transporting prisoners out of the county;
- i. failed to compensate detention officers for the fifteen minutes before and fifteen minutes after shift;
- j. failed to compensate detention officers for time spent performing head counts over the normal shift;
- k. failed to compensate detention officers for cell searches performed over the shift; and,
- l. failed to pay overtime pay for straight time for all hours employed in excess of 160 hours in a work period.

## **V. CAUSE OF ACTION**

15. Defendants have a pattern of depriving the plaintiffs overtime wages and compensatory time by means of various systemic practices all in violation of the Fair Labor Standards Act.

16. The Defendants' conduct and unlawful practices in regard to overtime and compensatory time affect all present and former employees in the same or similar manner thus making appropriate notice to the potential class of plaintiffs notifying them of the pendency of this action and allowing them an opportunity to opt into the case. This is an appropriate collective action under § 216(b).

17. Plaintiffs and all those similarly situated are entitled to their overtime pay in an amount which is one and one half time their current pay or in the case of an employee who

is no longer employed, one and one half times their hourly wage at the time of termination. Plaintiffs are also entitled to an equal amount in liquidated damages for the defendants' intentional willful and reckless disregard of the plaintiffs rights under the Fair Labor Standards Act.

**WHEREFORE**, plaintiffs pray that upon trial of this cause that judgment be entered awarding the plaintiffs:

1. Unpaid compensation for all hours worked in excess of forty hours at the rate of one and one half time their regular hourly wage;
2. An equal amount as liquidated damages as allowed under the Fair Labor Standards Act;
3. An injunction against further violations;
4. Pre and post judgment interest as provided by law;
5. Reasonable attorney's fees, costs and expenses as provided in the Fair Labor Standards Act; and,
6. Such other and further relief to which the plaintiffs may be entitled.

Respectfully submitted,

BY: George P. Powell  
GEORGE P. POWELL  
State Bar No. 16196000  
Fed. I.D. No. 3849  
"Attorney In Charge"  
**HINOJOSA & POWELL, P.C.**  
612 Nolana, Ste. 410  
McAllen, TX 78504  
(956) 686-2413  
Fax No. (956) 686-8462

JAMES A. HERRMANN  
State Bar No. 09541500  
Fed. I.D. No. 3824  
1205 E. Tyler Avenue  
P O Box 2541  
Harlingen, TX 78551-2541  
(956) 421-5776  
Fax No. (956) 421-5779

JOE VALLE  
State Bar No. 20435450  
Fed. I.D. No. 11422  
1120 E. 10th Street  
Brownsville, Texas 78520  
(956) 546-2829  
Fax No. (956) 542-4084

PATRICIA A. HERNANDEZ  
State Bar No. 00790874  
Fed. I.D. No. 18085  
117 E. Price Road  
Brownsville, TX 78521  
(956) 541-9001  
Fax No. (956) 550-9553

**CERTIFICATE OF SERVICE**

I, GEORGE P. POWELL, do hereby certify that on this the 2nd day of June, 1998, I caused to be mailed a true and correct copy of Plaintiffs' First Amended Original Complaint to defendants' attorney of record:

Mr. Richard O. Burst  
**Legal Division Commissioners' Court**  
964 E. Harrison St.  
Brownsville, TX 78520

George P. Powell  
GEORGE P. POWELL